

ASSEMBLY BILL

No. 348

Introduced by Assembly Member Chu
(Coauthor: Assembly Member Lowenthal)
(Coauthor: Senator Alpert)

February 11, 2003

An act to amend Sections 5152, 5154, 5257, 5259.3, 5264, 5267, 5270.35, and 5309 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as introduced, Chu. Mental health: involuntary confinement: psychologists.

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary detention and treatment of any person with a mental disorder who, as a result of the mental disorder, is a danger to others or to himself or herself, or is gravely disabled.

Existing law establishes various requirements with respect to determinations to be made by a psychiatrist directly responsible for a person's treatment for the initial detention for evaluation and treatment under the act, for various subsequent periods of confinement for treatment under the act, and for the release of any person subject to the act.

This bill would provide that a psychologist who is directly responsible for the patient's treatment may also make those determinations.

This bill would also provide that its provisions shall not be construed to revise or to expand the scope of practice, as defined, of psychologists.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5152 of the Welfare and Institutions
2 Code is amended to read:

3 5152. (a) Each person admitted to a facility for 72-hour
4 treatment and evaluation under the provisions of this article shall
5 receive an evaluation as soon *as possible* after he or she is admitted
6 ~~as possible~~ and shall receive whatever treatment and care his or her
7 condition requires for the full period that he or she is held. The
8 person shall be released before 72 hours have elapsed only if, the
9 psychiatrist *or psychologist* directly responsible for the person's
10 treatment believes, as a result of ~~his or her~~ *the psychiatrist's or*
11 *psychologist's* personal observations, that the person no longer
12 requires evaluation or treatment. If any other professional person
13 who is authorized to release the person, believes the person should
14 be released before 72 hours have elapsed, and the psychiatrist *or*
15 *psychologist* directly responsible for the person's treatment
16 objects, the matter shall be referred to the medical director of the
17 facility for the final decision. However, if the medical director is
18 not a psychiatrist, he or she shall appoint a designee who is a
19 psychiatrist *or psychologist*. If the matter is referred, the person
20 shall be released before 72 hours have elapsed only if the
21 psychiatrist *or psychologist* making the final decision believes, as
22 a result of ~~his or her~~ *the psychiatrist's or psychologist's* personal
23 observations, that the person no longer requires evaluation or
24 treatment.

25 (b) ~~Persons~~ Any person who ~~have~~ *has* been detained for
26 evaluation and treatment shall be released, referred for further care
27 and treatment on a voluntary basis, *or* certified for intensive
28 treatment, or a conservator or temporary conservator shall be
29 appointed pursuant to this part as required.

30 (c) ~~Persons who have been detained~~ A person designated by the
31 mental health facility shall give to any person who has been
32 detained at that facility for evaluation and treatment, and who ~~are~~
33 is receiving ~~medications~~ *medication* as a result of ~~their~~ *his or her*
34 mental illness, ~~shall be given~~, as soon as possible after detention,
35 written and oral information about the probable effects and

possible side effects of the medication ~~by a person designated by the mental health facility where the person is detained.~~ The State Department of Mental Health shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication. The following information shall be given orally to the patient:

(1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.

(2) The likelihood of improving or not improving without the ~~medications~~ medication.

(3) Reasonable alternative treatments available.

(4) The name and type, frequency, amount, and method of dispensing the ~~medications~~ medication, and the probable length of time ~~that the medications~~ medication will be taken.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release.

(d) The amendments to this section made by Assembly Bill _____ of the 2003–04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

SEC. 2. Section 5154 of the Welfare and Institutions Code is amended to read:

5154. (a) Notwithstanding Section 5113, if the provisions of Section 5152 have been met, the professional person in charge of the facility providing 72-hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section 5152, and the psychiatrist *or psychologist* directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before the end of 72 hours pursuant to this article.

(b) The professional person in charge of the facility providing 72-hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section

1 5152, and the psychiatrist *or psychologist* directly responsible for
2 the person's treatment shall not be held civilly or criminally liable
3 for any action by a person released at the end of the 72 hours
4 pursuant to this article.

5 (c) The peace officer responsible for the detainment of the
6 person shall not be civilly or criminally liable for any action by a
7 person released at or before the end of the 72 hours pursuant to this
8 article.

9 (d) *The amendments to this section made by Assembly Bill _____*
10 *of the 2003–04 Regular Session shall not be construed to revise or*
11 *expand the scope of practice of psychologists, as defined in*
12 *Chapter 6.6 (commencing with Section 2900) of Division 2 of the*
13 *Business and Professions Code.*

14 SEC. 3. Section 5257 of the Welfare and Institutions Code is
15 amended to read:

16 5257. (a) During the period of intensive treatment pursuant
17 to Section 5250 or 5270.15, *the person's involuntary detention*
18 *shall be terminated and the person shall be released* only if the
19 psychiatrist *or psychologist* directly responsible for the person's
20 treatment believes, as a result of ~~his or her~~ *the psychiatrist's or*
21 *psychologist's* personal observations, that the person certified no
22 longer is, as a result of mental disorder or impairment by chronic
23 alcoholism, a danger to others, or to himself or herself, or gravely
24 disabled; ~~then the person's involuntary detention shall end and the~~
25 ~~person shall be released.~~ If any other professional person who is
26 authorized to release the person believes the person should be
27 released during the designated period of intensive treatment, and
28 the psychiatrist *or psychologist* directly responsible for the
29 person's treatment objects, the matter shall be referred to the
30 medical director of the facility for the final decision. However, if
31 the medical director is not a psychiatrist, he or she shall appoint a
32 designee who is a psychiatrist *or psychologist*. If the matter is
33 referred, the person shall be released during the period of intensive
34 treatment only if the psychiatrist *or psychologist* making the final
35 decision believes, as a result of ~~his or her~~ *the psychiatrist's or*
36 *psychologist's* personal observations, that the person certified no
37 longer is, as a result of mental disorder or impairment by chronic
38 alcoholism, a danger to others, or to himself or herself, or gravely
39 disabled. Nothing herein shall prohibit ~~either~~ the person *from*
40 remaining at the facility on a voluntary basis or *prevent* the facility

1 from providing the person with appropriate referral information
2 concerning mental health services.

3 A person who has been certified for a period of intensive
4 treatment pursuant to Section 5250 shall be released at the end of
5 14 days unless the patient either:

6 ~~(a)~~

7 (1) Agrees to receive further treatment on a voluntary basis.

8 ~~(b)~~

9 (2) Is certified for an additional 14 days of intensive treatment
10 pursuant to Article 4.5 (commencing with Section 5260).

11 ~~(c)~~

12 (3) Is certified for an additional 30 days of intensive treatment
13 pursuant to Article 4.7 (commencing with Section 5270.10).

14 ~~(d)~~

15 (4) Is the subject of a conservatorship petition filed pursuant to
16 Chapter 3 (commencing with Section 5350).

17 ~~(e)~~

18 (5) Is the subject of a petition for ~~Postcertification of an~~
19 ~~Imminently Dangerous Person~~ *postcertification treatment of a*
20 *dangerous person* filed pursuant to Article 6 (commencing with
21 Section 5300).

22 (b) *The amendments to this section made by Assembly Bill _____*
23 *of the 2003–04 Regular Session shall not be construed to revise or*
24 *expand the scope of practice of psychologists, as defined in*
25 *Chapter 6.6 (commencing with Section 2900) of Division 2 of the*
26 *Business and Professions Code.*

27 SEC. 4. Section 5259.3 of the Welfare and Institutions Code
28 is amended to read:

29 5259.3. (a) Notwithstanding Section 5113, if the provisions
30 of Section 5257 have been met, the professional person in charge
31 of the facility providing intensive treatment, his or her designee,
32 the medical director of the facility or his or her designee described
33 in Section 5257, and the psychiatrist *or psychologist* directly
34 responsible for the person's treatment shall not be held civilly or
35 criminally liable for any action by a person released before the end
36 of 14 days pursuant to this article.

37 (b) The professional person in charge of the facility providing
38 intensive treatment, his or her designee, the medical director of the
39 facility or his or her designee described in Section 5257, and the
40 psychiatrist *or psychologist* directly responsible for the person's

1 treatment shall not be held civilly or criminally liable for any
2 action by a person released at the end of the 14 days pursuant to
3 this article.

4 (c) The attorney or advocate representing the person, the
5 court-appointed commissioner or referee, the certification review
6 hearing officer conducting the certification review hearing, and
7 the peace officer responsible for the detainment of the person shall
8 not be civilly or criminally liable for any action by a person
9 released at or before the end of 14 days pursuant to this article.

10 (d) *The amendments to this section made by Assembly Bill _____*
11 *of the 2003–04 Regular Session shall not be construed to revise or*
12 *expand the scope of practice of psychologists, as defined in*
13 *Chapter 6.6 (commencing with Section 2900) of Division 2 of the*
14 *Business and Professions Code.*

15 SEC. 5. Section 5264 of the Welfare and Institutions Code is
16 amended to read:

17 5264. (a) A certification for imminently suicidal persons
18 shall be for no more than 14 days of intensive treatment, and shall
19 terminate only as soon as; the psychiatrist *or psychologist* directly
20 responsible for the person's treatment believes, as a result of ~~his or~~
21 ~~her~~ *the psychiatrist's or psychologist's* personal observations, that
22 the ~~individual~~ *person* has improved sufficiently for him *or her* to
23 leave, or is prepared to *voluntarily* accept ~~voluntary~~ treatment on
24 referral or to remain *on a voluntary basis* in the facility providing
25 intensive treatment ~~on a voluntary basis~~. If any other professional
26 person who is authorized to release the person, believes the person
27 should be released before 14 days have elapsed, and the
28 psychiatrist *or psychologist* directly responsible for the person's
29 treatment objects, the matter shall be referred to the medical
30 director of the facility for the final decision. However, if the
31 medical director is not a psychiatrist, he or she shall appoint a
32 designee who is a psychiatrist *or psychologist*. If the matter is
33 referred, the person shall be released before 14 days have elapsed
34 only if the psychiatrist *or psychologist* believes, as a result of ~~his~~
35 ~~or her~~ *the psychiatrist's or psychologist's* personal observations,
36 that the ~~individual~~ *person* has improved sufficiently for him or her
37 to leave, or is prepared to accept voluntary treatment on referral or
38 to remain in the facility providing intensive treatment on a
39 voluntary basis.

40 **Persons**

(b) Any person who ~~have~~ has been certified for 14 days of intensive treatment under this article and to whom Section 5226.1 is not applicable, or with respect to whom the criminal charge has been dismissed under Section 5226.1, shall be released at the end of the 14 days unless any of the following applies:

~~(a) Patients who agree~~

(1) The patient agrees to receive further treatment on a voluntary basis.

~~(b) Patients~~

(2) The patient has been recommended for conservatorship pursuant to Chapter 3 (commencing with Section 5350) of this part.

~~(c) Patients 5350).~~

(3) The patient is a person to whom Article 6 (commencing with Section 5300) of this chapter is applicable.

(c) The amendments to this section made by Assembly Bill _____ of the 2003–04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

SEC. 6. Section 5267 of the Welfare and Institutions Code is amended to read:

5267. (a) Notwithstanding Section 5113, if the provisions of Section 5264 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5264, and the psychiatrist *or psychologist* directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before the end of 14 days pursuant to this article.

(b) The professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5264, and the psychiatrist *or psychologist* directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released at the end of 14 days pursuant to this article.

(c) The amendments to this section made by Assembly Bill _____ of the 2003–04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in

1 Chapter 6.6 (commencing with Section 2900) of Division 2 of the
2 Business and Professions Code.

3 SEC. 7. Section 5270.35 of the Welfare and Institutions Code
4 is amended to read:

5 5270.35. (a) A certification pursuant to this article shall be
6 for no more than 30 days of intensive treatment, and shall
7 terminate only as soon as the psychiatrist *or psychologist* directly
8 responsible for the person's treatment believes, as a result of ~~his or~~
9 ~~her~~ the psychiatrist's or psychologist's personal observations, that
10 the person no longer meets the criteria for the certification, or is
11 either prepared to voluntarily accept ~~voluntary~~ treatment on a
12 referral basis or to remain *on a voluntary basis* in the facility
13 providing intensive treatment ~~on a voluntary basis~~. If any other
14 professional person who is authorized to release the person,
15 believes the person should be released before 30 days have
16 elapsed, and the psychiatrist *or psychologist* directly responsible
17 for the person's treatment objects, the matter shall be referred to
18 the medical director of the facility for the final decision. However,
19 if the medical director is not a psychiatrist, he or she shall appoint
20 a designee who is a psychiatrist *or psychologist*. If the matter is
21 referred, the person shall be released before 30 days have elapsed
22 only if the psychiatrist *or psychologist* believes, as a result of ~~his~~
23 ~~or her~~ the psychiatrist's or psychologist's personal observations,
24 that the person no longer meets the criteria for certification, or is
25 prepared to voluntarily accept ~~voluntary~~ treatment on referral or
26 to remain *on a voluntary basis* in the facility providing intensive
27 ~~treatment on a voluntary basis~~.

28 ~~Persons who have treatment.~~

29 (b) Any person who has been certified for 30 days of intensive
30 treatment under this article, shall be released at the end of 30 days
31 unless the patient either:

32 ~~(a) Agrees one or more of the following is applicable:~~

33 (1) The patient agrees to receive further treatment on a
34 voluntary basis.

35 ~~(b) Is~~

36 (2) The patient is the subject of a conservatorship petition filed
37 pursuant to Chapter 3 (commencing with Section 5350).

38 ~~(c) Is~~

39 (3) The patient is the subject of a petition for ~~Post-certification~~
40 ~~of an Imminently Dangerous Person~~ postcertification treatment of

1 *a dangerous person* filed pursuant to Article 6 (commencing with
2 Section 5300).

3 (c) *The amendments to this section made by Assembly Bill _____*
4 *of the 2003–04 Regular Session shall not be construed to revise or*
5 *expand the scope of practice of psychologists, as defined in*
6 *Chapter 6.6 (commencing with Section 2900) of Division 2 of the*
7 *Business and Professions Code.*

8 SEC. 8. Section 5309 of the Welfare and Institutions Code is
9 amended to read:

10 5309. (a) Nothing in this article shall prohibit the
11 superintendent or professional person in charge of the hospital in
12 which the person is being involuntarily treated from releasing him
13 or her from treatment prior to the expiration of the commitment
14 period when, the psychiatrist *or psychologist* directly responsible
15 for the person's treatment believes, as a result of ~~his or her~~ *the*
16 *psychiatrist's or psychologist's* personal observations, that the
17 person being involuntarily treated no longer constitutes a
18 demonstrated danger of substantial physical harm to others. If any
19 other professional person who is authorized to release the person,
20 believes the person should be released prior to the expiration of the
21 commitment period, and the psychiatrist *or psychologist* directly
22 responsible for the person's treatment objects, the matter shall be
23 referred to the medical director of the facility for the final decision.
24 However, if the medical director is not a psychiatrist, he or she
25 shall appoint a designee who is a psychiatrist *or psychologist*. If the
26 matter is referred, the person shall be released prior to the
27 expiration of the commitment period only if the psychiatrist *or*
28 *psychologist* making the final decision believes, as a result of ~~his~~
29 ~~or her~~ *the psychiatrist's or psychologist's* personal observations,
30 that the person being involuntarily treated no longer constitutes a
31 demonstrated danger of substantial physical harm to others.

32 (b) After actual notice to the public officer, pursuant to Section
33 5114, and to counsel of the person named in the petition, to the
34 court, and to the county mental health director, the plan for
35 unconditional release shall become effective within five judicial
36 days unless a court hearing on that action is requested by any of the
37 aforementioned parties, in which case the unconditional release
38 shall not take effect until approved by the court after a hearing.
39 This hearing shall be held within five judicial days of the actual
40 notice required by this subdivision.

1 (c) *The amendments to this section made by Assembly Bill _____*
2 *of the 2003–04 Regular Session shall not be construed to revise or*
3 *expand the scope of practice of psychologists, as defined in*
4 *Chapter 6.6 (commencing with Section 2900) of Division 2 of the*
5 *Business and Professions Code.*

